

2008-07

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2 OF THE PALM BEACH COUNTY CODE (ORDINANCE 03-030) PERTAINING TO CRIMINAL HISTORY RECORD CHECKS; AMENDING SECTION 2-373 OF THE PALM BEACH COUNTY CODE (DEFINITIONS); AMENDING SECTION 2-375 OF THE PALM BEACH COUNTY CODE (CRIMINAL HISTORY RECORD CHECKS); AMENDING SECTION 2-377 OF THE PALM BEACH COUNTY CODE (ENFORCEMENT); PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

PALM BEACH COUNTY
MAIN LIBRARY

APR 17 2008

Do not take from
the library

WHEREAS, the Board of County Commissioners of Palm Beach County ("Board") adopted the Palm Beach County Criminal History Record Check Ordinance (Ordinance No. 2003-030) on August 19, 2003 with an effective date of October 1, 2003; and

WHEREAS, Florida's Rules of Executive Clemency were changed in April of 2007 to provide for automatic restoration of civil rights for most felons upon completion of their sentences; and

WHEREAS, the current version of the Ordinance was based on the premise that civil rights would only be restored upon application and a hearing; and

WHEREAS, it has become apparent since the adoption of the Ordinance that certain types of offenses and certain types of contractors were not addressed by the Ordinance; and

WHEREAS, the Board desires to improve safety within County facilities by making the Ordinance more complete; and

WHEREAS, the Board of County Commissioners of Palm Beach County desires to amend Ordinance No. 2003-030.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. Chapter 2, Section 2-373 of the Palm Beach County Code entitled *Definitions* is hereby amended as follows:

- A. "Applicant" means the individual who applies for a criminal history record check.
- B. "Contractor" means any person who is not employed by the County and provides or delivers goods or services for, to or on behalf of the County, which shall include, but shall not be limited to, employees and subcontractors of contractors, unpaid contractors or volunteers, vendors, repair persons and delivery persons. "Contractor" shall also mean any non-governmental tenant of a County owned building, except tenants of County general aviation airports, including the employees and subcontractors of such tenants. The term "contractor" shall not include any local, State or Federal employees, or any persons employed by any mail, courier, postal or other similar delivery services.
- C. "County" means the Board of County Commissioners of Palm Beach County and its authorized representatives.

- 1 D. "Criminal History Record Check" means a fingerprint-based State and
2 national criminal history record check.
- 3 E. "Critical Facility" means those facilities or areas owned, operated or leased
4 by the County that have been determined by resolution of the Board to be
5 critical to security or public safety pursuant to section 4 of this Ordinance.
- 6 F. "Disqualifying Criminal Offense" means a conviction of or a plea of nolo
7 contendere or guilty to any of those criminal offenses listed in Appendix "A"
8 to this Ordinance in any jurisdiction during the ten (10) years prior to the date
9 of the criminal history record check. Notwithstanding the foregoing, any
10 conviction for which a full pardon has been granted or any adjudication of
11 delinquency shall not be considered a disqualifying criminal offense.
- 12 G. "Existing Contractor" means a contractor who required access to a critical
13 facility prior to the effective date of this Ordinance and will continue to
14 require access to the critical facility after the effective date of this Ordinance.
- 15 H. "New Contractor" means a contractor who will require access to a critical
16 facility for the first time on or after the effective date of this Ordinance.

17 **Section 2.** Chapter 2, Section 2-375 of Palm Beach County Code entitled *Criminal history*
18 *record checks* is hereby amended as follows:

19 A. All contractors shall be required to undergo a criminal history record check conducted
20 by or on behalf of the County in order to retain or be granted unescorted access to any critical
21 facility. Existing contractors shall be required to undergo a criminal history record check within
22 thirty (30) days of the effective date of this Ordinance. New contractors shall be required to undergo
23 a criminal history check prior to being granted unescorted access to any critical facility. Any
24 contractor found to have a disqualifying criminal offense or who fails to provide the information
25 necessary to complete a criminal history record check shall, when acting in his or her capacity as a
26 contractor for or on behalf of the County, be denied access to critical facilities or be required to be
27 accompanied by an escort designated by the County in critical facilities. The decision as to whether
28 to deny access or require an escort in critical facilities shall be at the discretion of the County. Any
29 contractor found to have an arrest for any offense involving juveniles shall, when acting in his or her
30 capacity as a contractor for or on behalf of the County, be denied access to critical facilities where
31 children are located including aquatic centers, Head Start facilities, community centers and the High
32 Ridge Family Center. Any contractor found to have an arrest for any offense involving animals
33 shall, when acting in his or her capacity as a contractor for or on behalf of the County, be denied
34 access to critical facilities where animals are located including animal care and control facilities.
35 The decision of whether to deny access or require an escort in critical facilities shall be at the
36 discretion of the County.

37 B. Prior to submitting a request for a criminal history record check pursuant to this
38 Ordinance, the County shall notify each applicant to be fingerprinted that his or her fingerprints will
39 be sent to the Florida Department of Law Enforcement for a state criminal history record check and
40 to the Federal Bureau of Investigation for a national criminal history record check.

41 C. The County shall notify any applicant found to have a disqualifying criminal offense
42 in writing that he or she has been found to have a disqualifying criminal offense and will be denied
43 access to critical facilities or be required to be accompanied by an escort designated by the County

1 in critical facilities unless the contractor provides the County with verifiable evidence that he or she
2 does not have a disqualifying criminal offense. The notification shall also state that the contractor
3 has the right to: (1) obtain a copy of his or her criminal history records; (2) to challenge the
4 completeness and accuracy of the criminal history records pursuant to State and Federal law; and (3)
5 to request a correction, change or update to the criminal history records pursuant to State and Federal
6 law. The written notification, sent by certified mail, shall not include specific information regarding
7 the contractor's criminal history records or the nature of the disqualifying criminal offense. The
8 County shall verify the identity of the contractor prior to releasing the criminal history records to the
9 contractor.

10 D. The County shall notify any applicant found to have an outstanding warrant in
11 writing by mail. The notification shall identify the jurisdiction of the outstanding
12 warrant so that the applicant may make arrangements to address the outstanding
13 warrant. The County shall also notify the jurisdiction which issued the warrant that
14 the warrant appeared on the criminal history record check of the applicant.

15 E. The County shall notify in writing any applicant found to have a prior arrest, without
16 a disposition on record, for the criminal offenses listed on Appendix "A" to this
17 Ordinance. If the arrest still has no disposition six months after the date of the notice
18 to the contractor, the contractor shall be denied access to critical facilities or be
19 required to be accompanied by an escort designated by the County in critical facilities
20 until the contractor provides the County with verifiable evidence that the prior arrest
21 has been resolved without a conviction or plea of nolo contendere or guilty to any of
22 the criminal offenses listed on Appendix "A" to this Ordinance.

23 F. The County Administrator may establish procedures for the implementation of this
24 Ordinance, which may include, but shall not be limited to, procedures for obtaining
25 and processing criminal history record check information, standardizing information
26 to be included in solicitations issued by the County and notifying contractors of the
27 requirements of this Ordinance.

28 G. Notwithstanding any provision of this Ordinance to the contrary, the access
29 restrictions set forth in this Ordinance shall only apply when a person is acting in his
30 or her capacity as a contractor for or on behalf of the County.

31 H. Nothing in this Ordinance shall be construed as prohibiting or preventing the County
32 from conducting any other background screening that the County may lawfully
33 undertake.

34 **Section 3.** Chapter 2, Section 2-377 of the Palm Beach County Code entitled *Enforcement*
35 is hereby amended as follows:

36 23. Any felony involving violence.

37 **Section 4. Repeal of Laws in Conflict.**

38 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
39 repealed to the extent of such conflict.

40 **Section 5. Severability.**

41 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason
42 held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the
43 remainder of this Ordinance.

1 held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the
2 remainder of this Ordinance.

3 **Section 6. Inclusion in the Code of Laws and Ordinances.**

4 The provisions of this Ordinance shall become and be made a part of the Code of Laws and
5 Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or
6 relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or
7 other appropriate word.

8 **Section 7. Effective Date.**

9 The provisions of this Ordinance shall become effective upon filing with the Department of
10 State.

11 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County,
12 Florida, on this the 11th day of March, 2008

13
14 Sharon R. Bock, Clerk & Comptroller
15 Palm Beach County

By: [Signature]
Deputy Clerk

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: [Signature]
Addie L. Greene, Chairperson

16
17
18
19 APPROVED AS TO FORM AND
20 LEGAL SUFFICIENCY

By: [Signature]
County Attorney

21
22
23 Filed with the Department of State on the 14th day of March, 2008.

ARTICLE IX. CRIMINAL HISTORY RECORD CHECK

Sec. 2-371. Title.

This article shall be known and may be cited as the "Palm Beach County Criminal History Record Check Ordinance."

(Ord. No. 03-030, § 1, 8-19-03)

Sec. 2-372. Authority.

This article is enacted pursuant to the authority vested in the county by F.S. § 125.5801.

(Ord. No. 03-030, § 2, 8-19-03)

Sec. 2-373. Definitions.

Board means the Board of County Commissioners of Palm Beach County.

Contractor means any person who is not employed by the county and provides or delivers goods or services for, to or on behalf of the county, which shall include, but shall not be limited to, employees and subcontractors of contractors, vendors, repair persons and delivery persons. The term "contractor" shall not include any local, state or federal employees, or any persons employed by any mail, courier, postal or other similar delivery services.

County means the board of county commissioners of the county and its authorized representatives.

Criminal history record check means a fingerprint-based state and national criminal history record check.

Critical facility means those facilities or areas owned, operated or leased by the county that have been determined by resolution of the board to be critical to security or public safety pursuant to section 2-354 of this article.

Disqualifying criminal offense means a conviction of or a plea of nolo contendere or guilty to any of those criminal offenses listed in Appendix "A" to this article. Notwithstanding the foregoing, any conviction for which a full pardon has been granted or for which a person has had his or her civil rights restored shall not be considered a disqualifying criminal offense.

Existing contractor means a contractor who required access to a critical facility prior to the effective date of this article and will continue to require access to the critical facility after the effective date of this article.

New contractor means a contractor who will require access to a critical facility for the first time on or after the effective date of this article.

(Ord. No. 03-030, § 3, 8-19-03)

Sec. 2-374. Critical facilities determination.

The board shall identify by resolution those facilities or areas owned, operated or leased by the county that the board determines to be critical to security or public safety, which resolution may be amended, replaced or supplemented by the board from time to time.

(Ord. No. 03-030, § 4, 8-19-03)

Sec. 2-375. Criminal history record checks.

(a) All contractors shall be required to undergo a criminal history record check conducted by or on behalf of the county in order to retain or be granted unescorted access to any critical facility. Existing contractors shall be required to undergo a criminal history record check within thirty (30) days of the effective date of this article. New contractors shall be required to undergo a criminal history check prior to being granted unescorted access to any critical facility. Any contractor found to have a disqualifying criminal offense or who fails to provide the information necessary to complete a criminal history record check shall, when acting in his or her capacity as a contractor for or on behalf of the county, be denied access to critical facilities or be required to be accompanied by an escort designated by the county in critical facilities. The decision of whether to deny access or require an escort in critical facilities shall be at the discretion of the county.

(b) Prior to submitting a request for a criminal history record check pursuant to this article, the county shall notify each contractor to be fingerprinted that his or her fingerprints will be sent to the Florida Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check.

(c) The county shall notify any contractor found to have a disqualifying criminal offense in writing that he or she has been found to have a disqualifying criminal offense and will be denied access to critical facilities or be required to be accompanied by an escort designated by the county in critical facilities unless the contractor provides the county with verifiable evidence that he or she does not have a disqualifying criminal offense. The notification shall also state that the contractor has the right to:

(1) Obtain a copy of his or her criminal history records;

(2) To challenge the completeness and accuracy of the criminal history records pursuant to state and federal law; and

(3) To request a correction, change or update to the criminal history records pursuant to state and federal law.

The written notification shall not include specific information regarding the contractor's criminal history records or the nature of the disqualifying criminal offense. The county shall verify the identity of the contractor prior to releasing the criminal history records to the contractor.

(d) The county administrator may establish procedures for the implementation of this article, which may include, but shall not be limited to, procedures for obtaining and processing criminal history record check information, standardizing information to be included in solicitations issued by the county and notifying contractors of the requirements of this article.

(e) Notwithstanding any provision of this article to the contrary, the access restrictions set forth in this article shall only apply when a person is acting in his or her capacity as a contractor for or on behalf of the county.

(f) Nothing in this article shall be construed as prohibiting or preventing the county from conducting any other background screening that the county may lawfully undertake.

(Ord. No. 03-030, § 5, 8-19-03)

Sec. 2-376. Alternative compliance.

A contractor shall be exempt from the requirements of this article if the contractor is subject to and in compliance with the criminal history record check requirements of:

(1) Title 49 Code of Federal Regulations Parts 1500 et al., as may be amended from time to time or any successor regulation or other federal regulation establishing criminal history record check requirements for public-use airports; or

(2) Any other federal, state or local law, which are equal to or more stringent than the requirements of this article.

(Ord. No. 03-030, § 6, 8-19-03)

Sec. 2-377. Enforcement.

This article shall be enforceable by all remedies available at law, but shall not be enforced as a misdemeanor in accordance with F.S. § 125.69(1).

(03-030, § 7, 8-19-03)

APPENDIX A. DISQUALIFYING CRIMINAL OFFENSES

1. Carrying a weapon or explosive into building where same is posted as prohibited.
2. Destruction or vandalism to a public buildings or property.
3. Conveying false information and threats.
4. Murder.
5. Assault with the intent to murder.
6. Espionage.
7. Sedition.
8. Kidnapping or hostage taking.
9. Treason.
10. Rape or aggravated sexual abuse.

11. Unlawful possession, use, sale, distribution or manufacture of an explosive, weapon or weapon of mass destruction.
 12. Terrorism.
 13. Hate crimes.
 14. Extortion.
 15. Armed or felony unarmed robbery.
 16. Distribution of, or intent to distribute, a controlled substance.
 17. Felony arson.
 18. Felony involving a threat.
 19. Felony involving:
 - A. Willful destruction of property.
 - B. Importation or manufacture of a controlled substance.
 - C. Burglary.
 - D. Theft.
 - E. Dishonesty, fraud or misrepresentation.
 - F. Possession or distribution of stolen property.
 - G. Aggravated assault.
 - H. Bribery.
 - I. Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year.
 - J. Violence at any public airport.
 - K. Information technology crimes including, but not limited to, unlawful use of protected information or hacking.
 20. Conspiracy or attempt to commit any of the criminal acts listed in this Appendix A.
 21. Any offense involving animals when the access requirement is a critical facility/area within an animal care and control facility.
 22. Any offense involving juveniles when the access requirement is an aquatic center, gymnasium HeadStart facility, community center or High Ridge Family Center.
- (Ord. No. 03-030, 8-19-03)
Secs. 2-378--2-390. Reserved

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk & Comptroller certify
this to be a true and correct copy of the original
filed in my office on MAR 11 2008

dated at West Palm Beach, FL on 3/24/2008

By: Judith C. [Signature]

Deputy Clerk

